

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 04-10**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Whether sales of services by [Taxpayer] to state and local governments qualify as wholesale sales for Tennessee business tax purposes.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

## **FACTS**

The Taxpayer is a provider of information technology services in the following three principal areas:

[PROFESSIONAL SERVICES]

[OUTSOURCING]

[CONSULTING SERVICES]

## **QUESTIONS PRESENTED**

1. Should services rendered to non-government clients that do not alter or produce tangible personal property be classified as wholesale or retail sales for Tennessee business tax purposes?
2. Should services provided to Tennessee state and local governments be classified as wholesale or retail sales for Tennessee business tax purposes?

## **RULINGS**

1. All of the Taxpayer's sales of services are retail sales regardless of whether the customer is a governmental or non-governmental entity and regardless of whether the service sold does, or does not, produce or alter a tangible product.
2. Services provided to Tennessee state and local governments should be classified as retail sales for Tennessee business tax purposes.

## **ANALYSIS**

The Taxpayer is Selling Services Subject to the Business Tax

T.C.A. § 67-4-702(a)(15)(B) states that a "sale" includes the furnishing of any of the things or services taxable under the business tax law. "Services" are defined by T.C.A. § 67-4-702(a)(18) as follows:

"Services" means and includes every activity, function or work engaged in by a person for profit or monetary gain except as otherwise provided in this part.  
"Services" does not include sales of tangible personal property.

T.C.A. § 67-4-702(a)(19), set forth in pertinent part below, defines "tangible personal property" as follows:

“Tangible personal property” means and includes personal property, which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.

The Taxpayer’s sale of the professional services, outsourcing and consulting services described in the facts above are clearly sales of services rather than the sale of tangible personal property.

T.C.A. § 67-4-708(3)(C) levies the business tax on:

Each person making sales of services or engaging in the business of furnishing or rendering services, except those described in subdivisions (3)(C)(i)-(xv)<sup>1</sup>. It is the legislative intent that the exceptions in subdivisions (3)(C)(i)-(xv) shall include the sales of services by those business or establishments so described in the Standard Industrial Classification Index of 1972, including all supplements and amendments prepared by the bureau of the budget of the federal government, except where otherwise provided:

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<sup>1</sup> The exceptions described in subdivisions (3)(C)(i)-(xv) are as follows:

- (i) Medical, dental, and allied health services to human beings, including sanatorium, convalescent and rest home care, but excluding services by persons engaged in the business of making dentures and artificial teeth;
- (ii) Legal services;
- (iii) Educational services offered by elementary and secondary schools, colleges, universities, professional schools and junior colleges, library and information centers, correspondence schools, vocational schools and specialized non-degree granting schools;
- (iv) Services rendered by nonprofit membership organizations operating on a nonprofit membership basis for the promotion of the interest of the members;
- (v) Domestic service performed in private households;
- (vi) Services furnished by nonprofit educational and research agencies;
- (vii) Services by religious and charitable organizations;
- (viii) Accounting, auditing and bookkeeping services;
- (ix) Public utilities as defined in [§ 65-4-101](#);
- (x) Services furnished by institutions which are engaged in deposit banking or closely related functions, including fiduciary activities, services furnished by persons engaged in extending credit or lending money except persons taxable under subdivision (5); services furnished by establishments engaged in the underwriting, purchase, sale or brokerage of securities on their own account or on the account of others; services furnished by exchanges, exchange clearing houses and other services allied with the exchange of securities and commodities; services furnished by investment trusts, investment companies, holding companies, and commodity trading companies;
- (xi) Insurance carriers or insurance agents of any type selling or furnishing necessary services related to insurance and insurance adjustors;
- (xii) Operators of residential and nonresidential buildings except hotels, motels and rooming houses;
- (xiii) Lessors of the following properties: agricultural, airport, forest, mining, oil, and public utility;
- (xiv) Services furnished by persons engaged in the practice of veterinary medicine, dentistry or surgery, including services involving the boarding and lodging of animals; or
- (xv) Services furnished by persons engaged in the practice of architecture, engineering or land surveying[.]

Since none of the services furnished by the Taxpayer are exempted by T.C.A. § 67-4-708(3)(C), such services are subject to the Tennessee business tax under Classification 3 of T.C.A. § 67-4-708.

### Wholesale and Retail Sales Distinguished

Since wholesale and retail sales of services subject to the Tennessee business tax under Classification 3 of T.C.A. § 67-4-708 are taxable at different rates, it is important to determine whether the Taxpayer's sales of services are wholesale or retail sales under Tennessee's business tax statutes.

T.C.A. § 67-4-702(a)(13) defines "retail sales" or "sale at retail" as follows:

"Retail sales" or "sale at retail" means a sale of tangible personal property or services rendered to a consumer or to any person for any purpose other than resale, and means and includes all such transactions as the commissioner finds to be in lieu of sales; provided that sales for resale must be in strict compliance with rules and regulations. Any person making a sale for resale which is not in strict compliance with rules and regulations shall personally be liable for and pay the tax.

A "wholesale sale" or "sale at wholesale" is defined by T.C.A. § 67-4-702(a)(21), set forth in pertinent part below, as follows:

"Wholesale" or "sale at wholesale" means the sale of tangible personal property or services rendered in the regular course of business to a licensed retailer for resale, lease or rental as tangible personal property in the retailer's regular course of business to a user or consumer. The quantity of property sold or the price at which the property is sold is immaterial in determining whether or not the sale is at wholesale.

In addition, Tenn. Comp. R. & Regs. 1320-4-5-.47(1), set forth in pertinent part below, makes the following provision concerning sales for resale.

Sales for resale include those whereby a supplier of . . . services makes such . . . services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such . . . services to a user or consumer.

It is clear that sales of services rendered to a consumer or to any person for any purpose other than resale are retail sales.

Likewise, it is clear that sales of services rendered in the regular course of business to a licensed retailer for resale in the retailer's regular course of business are wholesale sales.

### All of the Taxpayer's Sales are Retail Sales

The Taxpayer is selling services rather than tangible personal property. None of the Taxpayer's sales of services are to a licensed retailer for resale in the retailer's regular course of business and the Taxpayer is not making its services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such services to a user or consumer. This is true regardless of whether the taxpayer's customer is a governmental or non-governmental entity and regardless of whether the service sold does or does not produce or alter a tangible product.

The Taxpayer cites T.C.A. § 67-4-702(a)(21)(C) for the proposition that sales to state and local governments are wholesale in nature. The statute reads as follows:

"Wholesale sale" or "sale at wholesale" includes the sale by a wholesaler of tangible personal property to the state of Tennessee or any county or municipality or subdivision thereof, . . .

Tenn. Comp. R. & Regs. 1320-4-5-.50 further provides that:

Sales of tangible personal property to the State of Tennessee or any county or municipality or subdivision thereof, . . . shall be deemed to be wholesale sales and taxable at the appropriate wholesale taxable rate. Such sales made to the Federal Government shall likewise be deemed to be wholesale sales.

However, T.C.A. § 67-4-702(a)(21)(C) and Tenn. Comp. R. & Regs. 1320-4-5-.50 are not applicable to the facts presented since they apply only to the sale of tangible personal property. As discussed above, the Taxpayer is providing a service rather than selling tangible personal property.

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APPROVED: Loren L. Chumley, Commissioner

DATE: 3/15/04

